

QUESTION I - July 2009

PLEASE NOTE: QUESTION I was a "Multistate Performance Test" (MPT) and is not reproduced here. For additional information see: <http://www.ncbex.org/>.

QUESTION II - July 2009

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QUESTION III - July 2009

Doug Douglas is facing trial on several criminal charges. The case file reveals the following information.

A police officer in Smalltown, Vermont, saw a car come to a screeching halt. Doug was driving. Andy Anderson was a passenger in the car. Doug and Andy got out of the car and began verbally fighting with one another. During the fight, the officer heard Andy shout at Doug: "You shouldn't have messed with Smalltown Jewels – you know that's owned by my uncle." Andy then saw the police officer and ran away. The next day Andy left the country to work on an oil rig in South America, and has not returned.

The officer knew from past experience and a radio check that Doug's license was suspended and Doug had two prior convictions for driving with a suspended license. The officer arrested Doug for driving with a suspended license. The officer searched him at the time of arrest and found a small pointed metal tool in the pocket of Doug's pants. The officer didn't know what the tool was for but sealed it in an evidence bag. The officer handcuffed Doug and placed him in the back of the police car.

The officer then entered the passenger compartment of Doug's car. On the floor beneath the back seat there was a pile of rags. Underneath the rags were six antique pocket watches.

A state expert identified the metal tool as a tool used for picking locks. The police investigation later confirmed that the pocket watches were taken from Smalltown Jewels during a burglary the night before the arrest.

Doug was subsequently charged with three criminal offenses: driving with license suspended, third offense; possession of a burglar's tools; and burglary.

- (1) May the three offenses be joined in a single information? Discuss.
- (2) How and when should Doug's attorney raise the issue of admissibility of evidence in his trial? Discuss.
- (3) May the police officer testify about Andy's statement to Doug? Discuss.

(4) Is the metal tool found in Doug's pants admissible? Discuss.

(5) Are the watches found in Doug's car admissible? Discuss.

QUESTION IV - July 2009

Andrea, a sixty-year old Vermont widow with three adult children, falls in love with Bob, who is thirty years old. Andrea and Bob decide to marry as soon as they return from a planned two-month vacation in Europe. Shortly before they leave for the trip, however, Andrea learns she has a terminal disease. In a rush, they go to an attorney to seek advice.

Andrea's financial affairs are somewhat complicated. The attorney advises Andrea that it may take some time to prepare a comprehensive estate plan and related agreements to replace the will Andrea had prepared twenty years ago after the death of her first husband. As an interim measure, Andrea signs a "Durable Power of Attorney" appointing Bob as her agent and attorney-in-fact for all financial affairs, and authorizing him to take any action Andrea could take personally at any time that Andrea is alive.

Before leaving for Europe, Bob executes a document entitled the "Andrea Revocable Living Trust." The Trust provides that all of its assets are to be used for Andrea's benefit during her lifetime, and, if not sooner revoked, shall become Bob's property after Andrea's death. After consulting with Andrea, Bob transfers Andrea's bank accounts to the Trust. Her stocks, real estate and expensive art collection remain in her name. Andrea tells Bob she wants to be sure that Bob will have the real estate if Andrea dies, and that she wants her favorite local museum to receive most of her art collection. Bob is pressed for time, however, so he does not transfer any of this property.

While they are in Europe, Andrea suffers a stroke and is incapacitated. Bob brings Andrea to a Vermont hospice facility where Andrea is heavily sedated. Bob then executes the following documents:

Andrea dies without recovering and before she can marry Bob.

Bob wants to administer the new will that leaves Andrea's estate to Bob, and to implement the Trust according to its terms. Andrea's children object; they prefer the twenty-year old will that provides all of Andrea's estate is to be divided equally among her three children. Andrea's children contend that Andrea's estate should include Andrea's real estate, bank accounts, stocks and art collection.

- A. Deeds and documents transferring Andrea's real estate and stocks to the Trust.
 - B. Documents transferring Andrea's entire art collection to her favorite local museum.
 - C. A will revoking Andrea's previous will and leaving Andrea's entire estate to Bob.
- 1) Discuss and analyze whether the will executed by Bob is effective.

- 2) Discuss and analyze whether the Trust is valid.
- 3) Discuss and analyze the likely disposition of Andrea's bank accounts, real estate, art collection and stocks.
- 4) Discuss and analyze the forum(s) that will decide these disputes, and the process for raising and resolving the claims the parties will make.

QUESTION V - July 2009

Early in 2004, Mariana, Ike, and Paul formed Transcendence, Inc., a Vermont corporation, to breathe new life into an old funeral home business. Ike and Paul invested by purchasing the funeral home and office equipment for the new company; Mariana agreed to run the business day-to-day. As reflected in organizational documents, each owned a 1/3 interest in the company.

At the duly-warned annual meeting in July 2004, Ike and Mariana voted to negotiate a contract between Transcendence, Inc. and Cutting-Edge Cremations ("CEC") to purchase and install a cremation unit within the funeral home. The unit was to be fully integrated into the funeral home's utility and ventilation systems, but without compromising the building's architecture. The unit was designed to collect and deposit ashes of the deceased into special CEC-manufactured biodegradable burial urns. Before voting, Ike disclosed to Paul and Mariana that he was a majority owner of CEC. Although Paul objected to purchasing from CEC, Mariana voted with Ike to authorize negotiations with CEC, and the project moved forward.

In August 2004, CEC lent \$150,000 to Transcendence, Inc. for the purchase and installation of the unit, and established a line of credit for future urn purchase orders. CEC recorded a UCC-1 financing statement with the Vermont Secretary of State's Office, making reference to a "purchase money security interest in CEC cremation unit #DBGJ90558 and CEC burial urns" and naming "Transandance, LLC" as debtor. A month later, without CEC's knowledge, Transcendence, Inc. obtained a \$300,000 revolving line of credit loan from Brightstar Bank. Brightstar Bank recorded its UCC-1 in the local land records, identifying the debtor as "Transcendence, Inc." and describing the collateral as "all assets of the debtor." Brightstar Bank checked the box next to the "fixture filing" section of the form, and attached a legal description of the funeral home property.

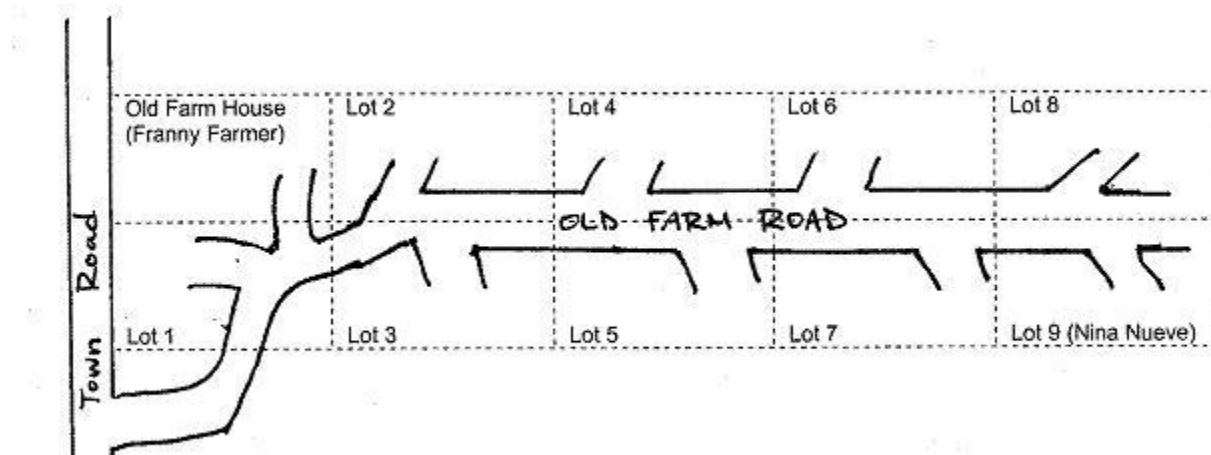
By late 2008, the business was moribund. The cremation unit had fallen into disrepair; Paul suspected it had never been properly installed. Paul also noticed that some of the CEC burial urns were biodegrading on the funeral home's shelves. CEC's response to Paul was to point to certain "no express or implied warranties" language on the back of the purchase orders.

Earlier this year, the three shareholders called it quits. Though not officially dissolved, all that remains of Transcendence, Inc. in July 2009 is the funeral home, the unit, unused burial urns, office equipment, and large debts owed to CEC and Brightstar Bank. In the meantime, Mariana has started a new company – Reincarnators, Inc. – specializing in providing spiritual counseling

- (1) Does Paul have any claims against Mariana and/or Ike? Discuss.
- (2) Does Transcendence, Inc. have any claims against CEC? What defenses will CEC assert? Discuss.
- (3) Are CEC and Brightstar Bank secured creditors of Transcendence, Inc.? Discuss.
- (4) Do any legal risks run to Reincarnations, Inc. if Mariana accepts Ike's offer? Discuss.

About 16 years ago, Franny Farmer inherited her family's 100-acre farm. The property included an old farmhouse, and was crossed by a private road known as the Old Farm Road.

Franny developed nine lots of ten acres each, retaining a ten-acre parcel where the farmhouse stood. The Old Farm Road passed through each of the nine developed lots, but not through her parcel. Although Franny's parcel was adjacent to the town road next to the farm, access to her farmhouse was from a driveway off the Old Farm Road, as was the case with all of the driveways for the nine developed lots.



In the deed to each of the nine lots that Franny sold, she included the following provisions:

1. Each parcel is subject to an easement 30 feet in width and centered on the Old Farm Road for the common benefit of grantees. Said easement may be used by Grantees in common for access to a single family residence.

2. Grantees shall be jointly responsible for maintaining the Old Farm Road, and share pro rata based on acreage in any reasonable and necessary expenses.

Lot 9, at the end of Old Farm Road, was purchased by Nina Nueve. Nina is an avid organic gardener, and over the years has expanded her garden to the point where she is now cultivating more than eight acres of her land. The yield from her garden has grown to the point where last year she decided to open a farm stand to sell the excess produce. She set up the farm stand in her driveway, and during the growing season it attracted between 5 and 10 patrons per day, including many of her neighbors on the Old Farm Road. She also received occasional truck loads of organic compost for her garden.

For many years, the owners of Lots 1 through 9 paid \$900 to plow the Old Farm Road in the wintertime, with each contributing \$100 toward the plowing expense. But this year, after Nina's first season operating her farm stand, the Old Farm Road was heavily worn and required extensive repairs costing \$10,000.

Her fellow lot owners are concerned about the expense to repair the road and have asked Nina to pay for the repairs. Nina has refused, saying that she cannot afford it, and arguing that her farm stand attracted no more visitors than generally visited other lot owners' homes. The lot owners have also for the first time requested that Franny pay her pro rata share of the repair and plowing expenses. Franny too has refused, saying she is not obligated to share in the road maintenance expenses.

The town has no applicable zoning regulations, and Vermont Act 250 (12 V.S.A. §6001 et seq., Land Use and Development) does not apply.

The owners of parcels 1 through 8 retain you to advise them on the following questions:

1. Does Nina have the right to use the Old Farm Road to access the farm stand operated on her property?
2. What are Nina's obligations to pay for the road repair costs?
3. What are Franny's rights to use the Old Farm Road?
4. What are Franny's obligations to pay for maintenance costs?

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